

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Kendra Silvia, individually and on behalf of all
others similarly situated,

Plaintiff,

-v.-

Midland Credit Management, Inc., and John
Does 1-25;

Defendants.

Case No.:

**CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL**

Plaintiff Kendra Silvia brings this Class Action Complaint by and through her attorneys, Brubaker Law Group PLLC, against Defendants Midland Credit Management, Inc. (“Midland”), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.

INTRODUCTION/PRELIMINARY STATEMENT

1. The Fair Debt Collection Practices Act (“FDCPA” or “Act”) was enacted in response to the “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” 15 U.S.C. §1692(a). This was because “abusive debt collection practices contribute to the number of personal bankruptcies, to material instability, to the loss of jobs, and

1 to invasions of individual privacy.” *Id.* The Act concluded that “existing laws...[we]re inadequate
 2 to protect consumers,” and that “the effective collection of debts” does not require
 3 “misrepresentation or other abusive debt collection practices.” 15 U.S.C. §§ 1692(b) & (c).

4 2. The purpose of the Act was not only to eliminate abusive debt collection practices, but
 5 also to ensure “that those debt collectors who refrain from using abusive debt collection practices
 6 are not competitively disadvantaged.” *Id.* § 1692(e). After determining that the existing consumer
 7 protection laws were inadequate, *Id.* § 1692(b), consumers were given a private cause of action
 8 against debt collectors who fail to comply with the Act. *Id.* at § 1692k.

9 **JURISDICTION AND VENUE**

10 3. The Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1331 and
 11 15 U.S.C. § 1692 et. seq. The Court also has pendant jurisdiction over the State law claims, if any,
 12 in this action pursuant to 28 U.S.C. § 1367(a).

13 4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) as this is a
 14 substantial part of the events or omissions giving rise to the claim occurred and where the Plaintiff
 15 resides.

16 **NATURE OF THE ACTION**

17 5. Plaintiff brings this class action on behalf of a class of Washington consumers under
 18 Section 1692 et seq. of Title 15 of the United States Code, also known as the Fair Debt Collections
 19 Practices Act (“FDCPA”), and

20 6. Plaintiff is seeking damages and declaratory relief.

21 **PARTIES**

22 7. Plaintiff is a resident of the State of Washington, County of Clark.

1 8. Defendant MCM is a "debt collector" as the phrase is defined in 15 U.S.C.
2 § 1692(a)(6) and as used in the FDCPA and can be served upon their registered agent,
3 Corporation Service Company, at 300 Deschutes Way SW, STE 208 MC-CSC1, Tumwater,
4 WA 98501.

5 9. Upon information and belief, Defendant MCM is a company that uses the mail,
6 telephone, and facsimile and regularly engages in business the principal purpose of which is
7 to attempt to collect debts alleged to be due another.
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9 10. John Does 1-25, are fictitious names of individuals and businesses alleged for the
10 purpose of substituting names of Defendants whose identities will be disclosed in discovery
11 and should be made parties to this action.
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CLASS ALLEGATIONS

11. Plaintiffs bring this claim on behalf of the following case, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).

12. The Class consists of:

- a. all individuals with addresses in the State of Washington;
- b. to whom Defendant MCM sent a collection letter attempting to collect a consumer debt;
- c. containing deceptively worded settlement offers;
- d. which letter was sent on or after a date one (1) year prior to the filing of this action and on or before a date twenty-one (21) days after the filing of this action.

13. The identities of all class members are readily ascertainable from the records of Defendants and those companies and entities on whose behalf they attempt to collect and/or have purchased debts.

14. Excluded from the Plaintiff Class are the Defendants and all officer, members, partners, managers, directors and employees of the Defendants and their respective immediate families, and legal counsel for all parties to this action, and all members of their immediate families.

15. There are questions of law and fact common to the Plaintiff Class, which common issues predominate over any issues involving only individual class members. The principal issue is whether the Defendants' written communications to consumers, in the forms attached as Exhibit A, violate 15 U.S.C. §§ 1692e.

16. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories. The Plaintiff will fairly and adequately protect the interests of

1 the Plaintiff Class defined in this complaint. The Plaintiff has retained counsel with
 2 experience in handling consumer lawsuits, complex legal issues, and class actions, and
 3 neither the Plaintiff nor his attorneys have any interests, which might cause them not to
 4 vigorously pursue this action.

5 17. This action has been brought, and may properly be maintained, as a class action
 6 pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is
 7 a well-defined community interest in the litigation:
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- 9 a. **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges,
 10 that the Plaintiff Class defined above is so numerous that joinder of all
 11 members would be impractical.
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- 13 b. **Common Questions Predominate:** Common questions of law and fact exist
 14 as to all members of the Plaintiff Class and those questions predominate
 15 over any questions or issues involving only individual class members. The
 16 principal issue is whether the Defendants' written communications to
 17 consumers, in the forms attached as Exhibit A violate 15 U.S.C. § 1692e.
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- 19 c. **Typicality:** The Plaintiff's claims are typical of the claims of the class
 20 members. The Plaintiff and all members of the Plaintiff Class have claims
 21 arising out of the Defendants' common uniform course of conduct complained
 22 of herein.
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- 24 d. **Adequacy:** The Plaintiff will fairly and adequately protect the interests of the
 25 class members insofar as Plaintiff has no interests that are adverse to the
 26 absent class members. The Plaintiff is committed to vigorously litigating this
 27 matter. Plaintiff has also retained counsel experienced in handling consumer
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lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor her counsel have any interests which might cause them not to vigorously pursue the instant class action lawsuit.

- e. **Superiority:** A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

18. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff Class predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

19. Depending on the outcome of further investigation and discovery, Plaintiff may, at the time of class certification motion, seek to certify a class(es) only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

FACTUAL ALLEGATIONS

20. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered above herein with the same force and effect as if the same were set forth at length herein.

21. Some time prior to May 25, 2021, an obligation was allegedly incurred to creditor Synchrony Bank.

25. Synchrony Bank, purportedly sold the alleged debt to Defendant MCM who is collecting the alleged debt.

30. Second, Option 3 might be construed to be an option where monthly payments of \$50 would be made until the debt is paid off.

32. In addition, if Option 3 means that the \$50 payment would be made until the debt is fully paid off, the letter is deceptive because it describes all three options as “options designed to save you money.” If the debt is being paid in full under Option 3, it is not a discount program and therefore the letter is deceptive.

34. Defendant's deceptive, misleading and unfair representations with respect to its collection effort were material misrepresentations that affected and frustrated Plaintiff's ability to intelligently respond to Defendant's collection efforts because Plaintiff could not adequately respond to the Defendant's demand for payment of this debt.

36. Plaintiff was confused and misled to her detriment by the statements in the dunning letter, and relied on the contents of the letter to her detriment.

37. As a result of Defendants' deceptive, misleading and unfair debt collection practices, Plaintiff has been damaged.

COMPLAINT

- 1 1. Declaring that this action is properly maintainable as a Class Action and certifying
- 2 Plaintiff as Class representative, and Michael Brubaker, Esq. as Class Counsel;
- 3 2. Awarding Plaintiff and the Class statutory damages;
- 4 3. Awarding Plaintiff and the Class actual damages;
- 5 4. Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and
- 6 expenses;
- 7 5. Awarding pre-judgment interest and post-judgment interest; and
- 8 6. Awarding Plaintiff and the Class such other and further relief as this Court may
- 9 deem just and proper.

10 Dated: June 30, 2021

11 Respectfully submitted,

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